

**REMARKS**

The last Office Action in the above-identified application and the references cited by the Examiner have been carefully considered. The claims have been amended in a sincere effort to define more clearly and more specifically features of applicant's invention which distinguish over the art of record.

Initially, applicant respectfully requests a three-month extension of time to respond to the Office Action. A check in the amount of \$510.00 is enclosed herewith; however, please charge any deficiency or credit any overpayment for the extension fee to Deposit Account No. 502335.

The Examiner's consideration of applicant's arguments traversing the restriction requirement is gratefully appreciated. Nevertheless, the Examiner has maintained the restriction requirement and it is now deemed final. Accordingly, applicant has canceled Claims 1-50 and 66-99, as these claims were withdrawn from further consideration by the Examiner, without prejudice to incorporating the same in a divisional application.

Claims 51-65 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner's comments with respect to each of the claims rejected under 35 U.S.C. 112 are acknowledged and gratefully appreciated.

With respect to Claim 51, this claim was rejected as being indefinite because the Examiner felt that both the empty and occupied storage space are triggered by "the status switch being selected". What was intended by this language is so that Claim 51 covers a food product status switch which is either a toggle switch, or a momentary push button switch. Accordingly, every time the food product status switch is selected by the operator, either by the operator toggling the switch or by pressing the push button switch, the state of the food product status indicator associated with the storage location will change from either the first state to the second state, or from the second state to the first state.

In an effort to overcome the rejection under Section 112, and to further clarify the language used in the claim, Claim 51 has now been amended to state that the food product

status switch is selectively operated by a user for either changing the state of the food product status indicator associated with the storage location from the first state to the second state, or the second state to the first state. In either situation, operation by the user of the food product status switch will cause the state of the food product status indicator to change. It is respectfully urged that amended Claim 51 now obviates a rejection under 35 U.S.C. 112 and is in proper form. However, if the Examiner would prefer the applicant to use different language relating to the selective operation by the user of the food product status switch in order to change the state of the food product status indicator, it is respectfully requested that the Examiner so advise the applicant or applicant's attorney so that applicant may authorize the Examiner to make such change by way of an Examiner's amendment, or applicant may make the change in the next response filed in this case.

With respect to Claim 56, the Examiner contends that the claim is unclear because it recites only a "pan fill level", and that this is only information and is not a further element of the apparatus. In accordance with the Examiner's helpful comments, Claim 56 has been amended to now define the product status system as including a "pan fill level display" associated with the storage location, and that the "pan fill level display" indicates a quantity of the prepared food product to cook in response to the state of the food product status indicator changing to the second state. As shown in Figure 4 of the drawings, the pan level display 136 is shown as being associated with each storage location. The pan fill level display 136 is also described in the specification, in the bridging paragraph starting on page 24, line 23 to page 25, line 2. Accordingly, it is respectfully urged that Claim 56 is now in proper form and obviates a rejection under Section 112.

Claim 57, although not rejected under Section 112, has been amended in order to conform to the changes made in Claim 56 from which it depends. The claim now defines the pan fill level display as being located remotely from the storage location. This is clearly shown in Figure 4 of the drawings. The pan fill level display 136 forms part of display 18, which is described in the specification, at page 9, lines 6-8 thereof, as preferably being located in a centralized location which is readily accessible to the front counter station 12 and the drive-through station 14.

Applicants: Mark Salerno

Serial No: 09/692,578

Filed: October 19, 2000

Our Docket: 948-5

Page 8

Claim 58 has also been rejected under 35 U.S.C. 112 as being unclear because it recites only an "activity level", and again the Examiner comments that this is only information and is not a further element of the apparatus. Claim 58 has been revised so that it no longer states that the product status system is "further comprising an activity level"; rather, the claim, as amended, now states that the storage location has associated therewith an activity level corresponding to a rate of sale of the prepared food product. The claim, as amended, also defines the storage location as having associated therewith a pan fill level corresponding to the quantity of the prepared food product to cook in response to the state of the food product status indicator changing to the second state. The claim finally defines the pan fill level as changing as a function of the activity level. As disclosed in the specification, and in particular at page 25, lines 4-18 thereof, the activity level is preferably stored in memory and has associated therewith an activity level switch 138. The worker can manually adjust the activity level by depressing the activity level switch 138 until the desired activity level is displayed on the alphanumeric display panel 142. The activity level can also be automatically adjusted as a function of the time, the day, promotional events, sales and the like. The processor of the system processes this information to provide the proper activity level and to display the same on the display panel 142.

Also, at page 25, lines 4-18 of the specification, it is stated that the pan fill level for each of the twelve different products displayed in the product type sections 132 is a function of the activity level, which represents an overall rate of sale for all of the products. Therefore, if the activity level is increased, the pan fill level for each of the products may increase, causing additional product to be cooked and ready to meet an increase in demand. It is further states in the aforementioned section of the specification that a change in the activity level preferably causes changes in the pan fill level for each of the products independently. Again, the processor of the system uses this information and the state of the activity level switch 138 to change the activity level display shown on display panel 142 and the pan level display 136 discussed previously in relation to Claims 56 and 57. Accordingly, as now amended, Claim 58 is respectfully urged to obviate a rejection under Section 112 and is in proper form.

Claim 60 has also been rejected under Section 112, the Examiner contending that the claim is unclear because it would appear that the activity level switch changes only itself when activated. The Examiner's comments in this regard are acknowledged and gratefully appreciated, and Claim 60 has been amended to state that the activity level changes in response to activation of the activity level switch. Again, the disclosure of this recitation is found on page 25, lines 4-18 of the specification. Accordingly, it is respectfully urged that Claim 60 is now in proper form and obviates a rejection under Section 112.

Claim 62, although not rejected under Section 112, has been amended to clarify that the display defined by the claim is referring to the activity level display. The activity level display is shown in Figure 4 of the drawings, and is referred to by reference numeral 142. It is also described in the specification, on page 25, lines 4-18 thereof.

Claim 63 has also been amended, although not rejected under Section 112, to more clearly define that the display defined thereby refers to the selectable menu display, and that the storage location has a selectable menu associated therewith. Also, the pan fill level is further defined in the claim as corresponding to the quantity of the prepared food product to cook in response to the state of the food product status indicator changing to the second state. The selectable menu display is shown in Figure 4 of the drawings and is referred to by reference numeral 134. It is further described at page 25, lines 20-27 of the specification, where the selectable menu display 134 may display eggs, muffins, sausages and the like in the morning, and burgers, chicken sandwiches, fish sandwiches and the like in the afternoon.

Claim 64, similarly not rejected under Section 112, has been amended to positively recite that the product status system further comprises a selectable menu switch associated with the storage location, and that the selectable menu changes in response to activation of the selectable menu switch. The selectable menu switch is shown in Figure 4 of the drawings and is referred to by reference numeral 144. It is further described in the specification, at page 26, lines 1-9 thereof. The selectable menu switch 144 enables the product name displays 134.

Claim 65 has been rejected under 35 U.S.C. 112, as the Examiner contends that the claim is unclear because "in alignment" is unclear. Again, the comments of the Examiner are

acknowledged and gratefully appreciated in this regard. Claim 65 has been amended to change “in alignment with” to “in proximity to” to show that the food product status indicator and/or the food product status switch is situated near the food product pan. This is shown in Figure 2 of the drawings, where it is clearly ascertainable by the worker at the particular station 12, 14, 16, that the product status indicator 44 or the product status switch 42 relates to the pan of food 48 which is in proximity to the product status indicator 44 and/or product status switch 42. Accordingly, it is respectfully urged that Claim 65, as now amended, is in proper form and obviates a rejection under Section 112.

Claim 51-53 and 56-64 have been rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,026,372 (Savage). The Examiner contends that the Savage patent shows a processing circuit; a food product status switch associated with a storage location and coupled to the processing circuit, comprising the ECR entry panel 21 and means for providing the “finished input 13; and a food process status indicator associated with the storage location coupled to the processing circuit capable of showing first, second and third states associated with an occupied storage location and an unoccupied storage location, and storage time exceeded, respectively and in response to the food product status switch. The Examiner further contends that the Savage patent inherently discloses a storage timer associated with the storage location for determining when a product exceeds its acceptable hold time since the system subtracts the time to prepare an item from the time that a certain number of the item are desired, and in order to know how many to order, it is necessary to whether items currently being held will be expired at the time when a certain number are desired. The Examiner refers to column 2, lines 53-65 for disclosing this.

With respect to Claims 56-59, and Claim 62, the Examiner contends that the Savage patent shows a pan fill level and activity level, the pan fill level changing as a function of the activity level.

With respect to Claims 60 and 61, the Examiner contends that the Savage patent shows an activity level switch for changing the activity level in response to time of day or events, and refers to column 3, lines 17-23 for showing this.

With respect to Claims 63 and 64, the Examiner contends that the Savage patent discloses a display and a menu associated with the storage location having a pan fill level associated with it and having a selectable menu switch.

Claims 51-53 and 56-65 have also been rejected under 35 U.S.C. 103(a) as being unpatentable over the Savage patent, mentioned previously, in view of U.S. Patent No. 6,298,331 (Walker et al.). The Examiner contends that the Savage patent discloses a processing circuit; a food product status switch associated with a storage location and coupled to the circuit, comprising the ECR entry panel 21 and means for providing the “finished input” 13; and a food process status indicator associated with the storage location coupled to the processing circuit capable of showing first, second and third states associated with an occupied storage location and an unoccupied storage location, and storage time exceeded, respectfully and in response to the food product status switch. The Examiner acknowledges that the Savage patent does not disclose a storage time associated with the storage location or a third status indicator. However, the Examiner contends that the Walker et al. patent shows a storage timer and a third status indicator. The Examiner therefore concludes that it would have been obvious to one of ordinary skill in the art to modify the apparatus disclosed in the Savage patent by providing the storage time and status indicator disclosed in the Walker et al. patent in order to reduce waste.

With respect to Claim 52, the Examiner contends that the Savage patent, in view of the Walker et al. patent, discloses the status indicator having a fourth state showing that cooking should commence as claimed (e.g., via the McDonald’s software).

As to Claims 56-59, and Claim 62, the Examiner contends that the Savage patent, in view of the Walker et al. patent, discloses a pan fill level and activity level, the pan fill level changing as a function of the activity level.

With respect to Claims 60 and 61, the Examiner contends that the Savage patent, in view of the Walker et al. patent, discloses an activity level switch for changing the activity level in response to time of day or events, and again refers to column 3, lines 17-23 of the Savage patent.

With respect to Claims 63 and 64, the Examiner contends that the Savage patent, in view of the Walker et al. patent, discloses a display and a menu associated with the storage location having a pan fill level associated with it and having a selectable menu switch.

With respect to Claim 65, the Examiner contends that the Savage patent, in view of the Walker et al. patent, discloses all of the elements except the food product status switch being in alignment with the food product pan in the storage area. The Examiner contends, however, that it would have been obvious to one of ordinary skill in the art to modify the apparatus disclosed in the Savage patent by providing a switch in alignment with the food storage pan in order to provide a signal based on actual conditions in the storage area.

Claims 54 and 55 have further been rejected under 35 U.S.C. 103(a) as being unpatentable over the Savage patent in view of the Walker et al. patent, as applied to Claim 51, and further in view of U.S. Patent No. 5,875,430 (Koether). The Examiner contends that the Savage et al. patent in view of the Walker et al. patent, shows all of the elements except an active switch associated with the storage area, wherein the indicator has a seventh state indicating that the area is not being used. The Examiner contends that the Koether patent discloses these elements, and refers to Figure 7a of the Koether patent for disclosing this. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to further modify the apparatus disclosed in the Savage patent by providing these elements in order to prevent malfunctioning apparatus from being used until it has been repaired.

Claim 65 has also been rejected under 35 U.S.C. 103(a) as being unpatentable over the Savage patent. With respect to Claim 65, the examiner contends that the Savage patent discloses all of the elements except that the food product status switch is in alignment with the food product pan in the storage area. However, the Examiner concludes that it would have been obvious to one of ordinary skill in the art to further modify the apparatus disclosed in the Savage patent by providing a switch in alignment with the food storage pan in order to provide a signal based on actual conditions in the storage area.

The rejection of Claims 51-65 based on the Savage patent, or the combination of the Savage and Walker, et al. patents, or the combination of the Savage patent, the Walker et al. patent and the Koether patent, is respectfully traversed. It should be noted that Claim 51 is

the only independent claim, and Claims 52-65 directly or indirectly depend from independent Claim 51.

Claim 51, as amended, calls for a product status system for monitoring the status and storage location of a prepared food product. The product status system includes a processing circuit, a food product status switch associated with a storage location and which is coupled to the processing circuit, a food product status indicator associated with the storage location, and a storage timer associated with the storage location.

Claim 51, as amended, particularly defines the food product status indicator as having at least a first state which indicates that the prepared food product is stored at the associated storage location, and at least a second state which indicates that the prepared food product is not stored at the associated storage location. The claim further defines the state of the food product status indicator as changing from the second state to the first state in response to the prepared food product being supplied to the storage location and the food product status switch being selectively operated by a user. The claim also specifically states that the state of the food product status indicator changes from the first state to the second state in response to the storage location no longer containing prepared food product and the food product status switch being selectively operated by the user.

The storage timer is specifically defined in amended Claim 51 as being associated with the storage location and being coupled to the processing circuit. Claim 51 further defines the storage timer as being initiated in response to the food product status indicator changing from the second state to the first state, wherein the storage timer counts a storage time, the storage time being representative of the duration of time that the prepared food product has been stored at the storage location. The food product status indicator is further defined by Claim 51 as having at least a third state which indicates that the storage time exceeds an acceptable food product hold time, and that the processing circuit compares the storage time with the acceptable food product hold time. The state of the food product status indicator associated with the storage location changes to the third state in response to the storage time exceeding the acceptable food product hold time.

The Savage patent has been carefully considered, and it is respectfully urged that it does not teach or suggest the features set forth in Claim 51, as amended. The Savage patent discloses a system that uses a look-up table of patties to cook, and is connected to the cash register. The system includes a computer which looks up how many patties to cook and displays the list. From this, the cook starts the cooking process, and presses a button switch. When the cook finishes, he presses another button switch. The cash register then subtracts the products that are ready until the quantity is zero. The Savage computer system does not hold products or use product hold times, nor can the system change activity levels during the day without loading new data, as defined by the claims pending in the application.

More specifically, the Office Action states, at page 4, that the Savage system comprises “the ECR entry panel 21 and means for providing the ‘finished input’ 13, and a food process status indicator associated with the storage location coupled to the processing circuit capable of showing first, second and third states associated with an occupied storage location and an unoccupied storage location”.

The Savage patent does not disclose, anywhere in the patent, a food product status indicator associated with the storage location coupled to a processing circuit capable of showing first, second and third states associated with an occupied storage location and an unoccupied storage location. The Savage patent does not even mention holding food or food timers, or food to discard because of expired hold time. The Savage patent just monitors the number of food items sold based on signals from the cash registers 11, and instructs the cook to cook more. No hold times to determine the quality of the food already cooked are entered into the system.

The Examiner further states that “Savage inherently shows a storage timer associated with the storage location for determining when a product exceeds its acceptable hold time”. It is respectfully urged that the Savage patent does not describe anywhere in the patent holding cabinets, nor does it disclose storing in the system product hold times. The Savage system does not use product holding timers, and does not calculate the age of cooked product.

The Examiner further states that “since the system subtracts the time to prepare an item from the time that a certain number of the item are desired, and in order to know how

many to order, it is necessary to whether items currently being held will be expired at the time when a certain number are desired".

Again, it is respectfully urged that such is not inherently or positively disclosed in the Savage patent. The computer system disclosed in the Savage patent does not maintain hold times, nor compare hold times to determine if the food should be discarded rather than served. The Savage system does not place products into hold devices. A review of the flow chart shown in Figure 3 of the Savage patent shows the opposite, that the system does not take into account hold times, or use hold timers, or determine based on the hold times when products have expired and should be discarded. A block diagram shown in Figure 2 of the Savage patent, which discloses the computerized cash register used in the Savage system, does not disclose any product hold timers. Also, applicant has reviewed column 2, lines 53-65 of the Savage patent, and the calculation of hold times, the use of hold timers, and the determination of whether food products have expired based on a hold time are not disclosed.

The Savage computer system uses the look-up table to determine how many items to cook. The keyboard or touch screen entry point 13 is for commencement of the cooking cycle and for ending the cooking cycle, and the signals from the electronic cash register are used to subtract what product is sold and to signal the cook to initiate further cooking. No hold times or hold timers are disclosed in the Savage patent, nor is a determination made as to when food product has been held too long and should be discarded, based on a hold time calculation.

Accordingly, it is respectfully urged that Claim 51, as amended, patentably distinguishes over the Savage patent and is allowable.

Claim 52 depends from Claim 51 and is respectfully urged to patentably distinguish over the Savage patent for the same reasons submitted with respect to Claim 51. Also, Claim 52 particularly defines the food product status indicator as having a fourth state which indicates that the cooking of a replenishment food product should commence. Claim 52 further defines the processing circuit of the product status system as comparing the storage time with a cook start time, where the cook start time is specifically defined as being equal to the difference between the acceptable food product hold time and the time required to cook

the replenishment food product. Claim 52 also specifically defines the state of the food product status indicator associated with the storage location as changing to the fourth state in response to the storage time exceeding the cook start time.

The Savage patent does not disclose the specific features set forth in Claim 52. No food product status indicator is disclosed in the Savage patent. Even more specifically, no food product status indicator having a fourth state which indicates that the cooking of a replenishment food product should commence, and wherein the processing circuit compares the storage time with a cook start time, is disclosed in the Savage patent. There is no storage time mentioned anywhere in the Savage patent. Additionally, the cook start time, which is specifically defined as being equal to the difference between the acceptable food product hold time and the time required to cook the replenishment food product, is not disclosed in the Savage patent. Accordingly, it is respectfully urged that Claim 52, irrespective of its dependency on Claim 51, patentably distinguishes over the Savage patent and is allowable.

Claim 53 depends from Claim 51 and is respectfully urged to patentably distinguish over the Savage patent for the same reasons submitted with respect to Claim 51.

With respect to Claims 56-59 and 62, these claims which depend directly or indirectly from Claim 51 are urged to patentably distinguish over the Savage patent for the same reasons submitted with respect to Claim 51. Furthermore, it is respectfully urged that the claims, in their own right, patentably distinguish over the Savage patent, as Savage does not show a pan fill level, an activity level, a pan fill level display or an activity level display, as defined by Claims 56-59 and 62. The Savage patent does not disclose pans or fills. The Savage patent does not disclose a system where product is held, and the product hold times are measured. The Savage computerized system merely relies on the look-up table and the signals from the electronic cash register to determine how much to cook, as is clearly shown in the flow chart of Figure 3 of the Savage patent. There is no disclosure in the Savage patent of a pan fill level display, where the pan fill level display indicates a quantity of the prepared food product to cook in response to the state of the food product status indicator changing to the second state, as specifically defined by amended Claim 56. The Savage patent also does not disclose a pan fill level display being located remotely from the storage location, as specifically set forth in amended Claim 57.

The Savage patent also does not disclose a storage location for food product which has associated therewith an activity level corresponding to a rate of sale of the prepared food product, and a pan fill level corresponding to the quantity of the prepared food product to cook in response to the state of the food product status indicator changing to the second state, wherein the pan fill level changes as a function of the activity level, as specifically defined by Claim 58, as amended. The Savage computer system merely monitors the quantity of food products sold, but not the rate of sale, as specifically defined by amended Claim 58.

The Savage patent also does not teach or suggest the activity level being stored in the memory, as defined by Claim 59, the activity level corresponding to a rate of sale of the prepared food product.

The Savage patent also does not teach or suggest an activity level display which is remotely located from the storage location, again where the activity level is related to the rate of sale of the prepared food product, as defined by amended Claim 62. As such, it is respectfully urged that Claims 56-59 and 62 patentably distinguish over the Savage patent and are allowable.

With respect to Claims 60 and 61, again, these claims depend directly or indirectly from independent Claim 51 and patentably distinguish over the Savage patent for the same reasons submitted with respect to Claim 51. However, Claims 60 and 61 are respectfully urged to patentably distinguish over the Savage patent for the limitations recited therein. The Examiner states that Savage shows an activity level switch for changing the activity level in response to the time of day or events, and refers to column 3, line 17-23 of the Savage patent for showing this. However, the Savage patent states that “these values may be updated should it be determined that these values are not accurate portrays of daily activities” (column 3, lines 18-20 of the Savage patent specification). Thus, there is no disclosure in the specification, nor indication in any figure, of the Savage patent of an activity level switch, such as defined by Claims 60 and 61, which provides for a method of changing the activity level without loading new data. The Savage patent states to change activity levels, the data must be updated. The activity switch defined by Claims 60 and 61 of the subject application changes the percent of the sales up or down according to the requirement, and does not

require loading new data to change the activity level. As such, it respectfully urged that Claims 60 and 61 patentably distinguish over the Savage patent and are allowable.

With respect to Claims 63 and 64, it is respectfully urged that these claims patentably distinguish over the Savage patent for the same reasons submitted with respect to Claim 51, as these claims depend directly or indirectly from Claim 51. However, it is again respectfully urged that Claims 63 and 64 patentably distinguish over the Savage patent for the limitations recited therein. Applicant respectfully disagrees with the statement that "Savage shows display and a menu associated with the storage location having a pan fill level associated with it and having a selectable menu switch." A careful review of the Savage patent by applicant reveals that the Savage system does not incorporate a menu switch. The Savage system does not store products in pans and does not have pan levels associated with the storage locations. Claims 63 and 64 relate to assigning products (i.e., menu items) to holding (storage) locations. This is how the claimed system knows what product needs to be replaced using the hold timers. No selectable menu display, no selectable menu, no pan fill level and no selectable menu being electronically displayed on the selectable menu display, as called for specifically by Claim 63 is disclosed in the Savage patent. Furthermore, no selectable menu switch and no selectable menu changing in response to activation of the selectable menu switch, as specifically defined by Claim 64, as amended, is disclosed in the Savage patent. Accordingly, it is respectfully urged that Claims 63 and 64 patentably distinguish over the Savage patent and are allowable.

With respect to the rejection of Claims 51-53 and 56-65 in view of the combination of the Savage patent and the Walker et al. patent, the arguments concerning the Savage patent mentioned previously apply here as well. The Walker et al. patent is directed to an apparatus which determines a time until expiration of a food product. The apparatus determines the time until expiration by receiving a start signal indicating that a food product is available to sell. The start signal may be generated by a timer on a warming bin which is initiated when a food product is placed in the bin. The elapsed time is measured from when the start signal was received, and the time until expiration is determined. Based on the time until expiration, the apparatus sets the minimum price of that food product. Customers at a POS terminal may

then purchase the aged food product for a minimum price. In summary, the Walker et al. patent uses a POS system and discounts price when food product is about to expire.

The Walker et al. patent discloses the conventional use of product timers in the food industry, but does not supplement the inadequacies of the Savage patent. With respect to independent Claim 51, the Walker et al. patent does not disclose a food product status switch associated with a storage location and a food product status indicator associated with a storage location, where the food product status indicator has a first state which indicates that the prepared food product is stored at the associated storage location and at least a second state which indicates that the prepared food product is not stored at the associated storage location, and where the state of the food product status indicator associated with the storage location changes from the second state to the first state in response to the prepared food product being supplied to the storage location and the food product status switch being selectively operated by a user, and where the state of the food product status indicator associated with the storage location changes from the first state to the second state in response to the storage location no longer containing prepared food product and the food product status switch being selectively operated by the user. As mentioned previously, the Savage patent also does not disclose this structure.

The Walker et al. patent further does not teach or suggest the food product status indicator having a third state which indicates that the storage time exceeds an acceptable food product hold time, with the food product status indicator changing to the third state in response to the storage time exceeding the acceptable food product hold time, as defined by amended Claim 51. Again, as mentioned previously, the Savage patent also does not teach or suggest these features. Accordingly, it is respectfully urged that Claim 51 patentably distinguishes over the Savage patent and the Walker et al. patent, taken alone or in combination, and is allowable.

Claim 52 calls for the food product status indicator having at least a fourth state, which indicates that the cooking of a replenishment food product should commence. Claim 52 also specifically defines the processing circuit as comparing the storage time with a cook start time, where the cook start time is equal to the difference between the acceptable food product hold time and the time required to cook the replenishment food product, and where

the state of the food product status indicator associated with the storage location is changed to the fourth state in response to the storage time exceeding the cook start time. The automated kitchen apparatus and the POS terminal of the Walker et al. patent do not include a food product status indicator which has a fourth state to indicate that cooking of the replenishment food product should commence, nor does the patent disclose a cook start time which is equal to the difference between the acceptable food product hold time and the time required to cook the replenishment food product. Such structure is absent from the flow charts and the description of the automated kitchen apparatus disclosed in the Walker et al. patent. As stated previously, the Savage patent does not disclose the features of Claim 52 either. Accordingly, it is respectfully urged that Claim 52 patentably distinguishes over the Savage patent and the Walker et al. patent, taken alone or in combination, and is allowable.

Claim 53 relates to the display that indicates the state of the food product status indicator as being located remotely from the storage location. This claim depends from Claim 51 and patentably distinguishes over the Savage patent and the Walker et al. patent, alone or in combination, for the same reasons submitted with respect to Claim 51.

With respect to Claim 56, as amended, the Walker et al. patent does not disclose a pan fill level display, where the pan fill level display indicates a quantity of the prepared food product to cook in response to the state of the food product status indicator changing to the second state. The Walker et al. automated kitchen apparatus merely measures the elapsed time since a start signal indicating that a food product is available to sell was received, and determining the time of expiration. No pan fill level display is disclosed in the Walker et al. patent, just as it is not disclosed in the Savage patent. Accordingly, Claim 56, as amended, patentably distinguishes over the combination of the Savage patent and the Walker et al. patent and is allowable. Accordingly, it is respectfully urged that Claim 56 patentably distinguishes over the Savage patent and the Walker et al. patent, taken alone or in combination, and is allowable.

Claim 57, as amended, defines the pan fill level display as being located remotely from the storage location. Again, the Walker et al. patent does not teach or suggest a pan fill level display, nor does the Savage patent, as discussed previously. Accordingly, it is

respectfully urged that Claim 57 patentably distinguishes over the Savage patent and the Walker et al. patent, taken alone or in combination, and is allowable.

Claim 58 defines the storage location as having associated therewith an activity level corresponding to a rate of sale of the prepared food product, and a pan fill level corresponding to the quantity of the prepared food product to cook in response to the state of the food product status indicator changing to the second state. Claim 58 also specifically defines the pan fill level as changing as a function of the activity level. No such disclosure of a pan fill level, an activity level or the pan fill level changing as a function of the activity level is taught or suggested by the Walker et al. patent. As stated previously, the Savage patent also does not disclose these features. Accordingly, it is respectfully urged that Claim 58, as amended, patentably distinguishes over the Walker et al. patent and the Savage patent, taken alone or in combination, and is allowable.

Claim 59 specifically defines the activity level as being stored in the memory of the product status system. This claim depends from Claim 58, where the activity level is defined as corresponding to a rate of sale of the prepared food product. For not only the reasons set forth with respect to Claim 51 which Claim 59 indirectly depends from, but also because of the fact that the Walker et al. patent does not disclose the activity level as particularly defined by the claim as being stored in a memory, it is respectfully urged that Claim 59 patentably distinguishes over the Walker et al. patent and the Savage patent, as discussed previously, either alone or in combination, and is allowable.

Claim 60 specifically defines an activity level switch associated with the storage location, where the activity level changes in response to the activation of the activity level switch. No activity level switch is disclosed in the Walker et al. patent, just as it is not disclosed in the Savage patent. As mentioned previously, the Savage patent states that to change activity levels, the data must be updated. Claim 60 provides a switch and a method of changing the activity level without loading new data. Such is not disclosed in the Walker et al. patent either, as the Walker et al. method and apparatus are directed to discounting food when the food product is about to be discarded, and has nothing to do with an activity level as defined by the claims herein. As such, Claim 60 is respectfully urged to patentably

distinguish over the Savage and Walker et al. patents, taken alone or in combination and is allowable.

Claim 61 specifically defines the activity level as changing in response to at least one of a time, a day and an event. Again, the Walker et al. patent discloses the discounting of food product which is about to be discarded, and measuring the time that has elapsed from when the food was cooked. First of all, there is no disclosure in the Walker et al. patent of an activity level, which is defined as corresponding to a rate of sale of the prepared food product. Second, there is no disclosure in the Walker et al. patent of an activity level changing in response to at least one of a time, a day and an event. The Savage patent, as mentioned previously, also does not teach or suggest the particular features set forth in Claim 61. Accordingly, it is respectfully urged that Claim 61 patentably distinguishes over the Savage patent and the Walker et al. patent, taken alone or in combination, and is allowable.

Claim 62, as amended, particularly defines the product status system of the present invention as including an activity level display, where the activity level display is located remotely from the storage location, and where the activity level is being displayed on the activity level display. Again, the activity level is defined by Claim 58 from which Claim 62 depends as corresponding to the rate of sale of the prepared food product. Such is not disclosed in the Walker et al. patent, just the elapsed time from the start of the product being cooked is computed with the Walker et al. automated kitchen apparatus, and the offer to sell customers aged food product. No activity level display or activity level is provided in the Walker et al. automated kitchen apparatus and method, nor is such disclosed in the Savage patent. Accordingly, it is respectfully urged that Claim 62, as amended, patentably distinguishes over the Savage patent and the Walker et al. patent, taken alone or in combination, and is allowable.

Claim 63, as amended, defines the product status system as including a selectable menu display, the selectable menu being displayed on the selectable menu display, and the selectable menu having associated therewith a pan fill level which corresponds to the quantity of the prepared food product to cook in response to the state of the food product status indicator changing to the second state. No pan fill level, selectable menu or selectable menu display is disclosed in the Walker et al. patent. The Walker et al. patent merely discloses an

automated kitchen apparatus and method where customers at a POS terminal may purchase aged food products, and the time which has elapsed since the food product was cooked is measured. As mentioned previously, the Savage patent also does not disclose a selectable menu, a selectable menu display and a pan fill level associated with the storage location. The Savage patent does not disclose a system where menus may be selected; there is only one fixed table with product names. Accordingly, it is respectfully urged that Claim 63, as amended, patentably distinguishes over the Savage patent and the Walker et al. patent, taken alone or in combination, and is allowable.

Claim 64, as amended, specifically defines the product status system as further including a selectable menu switch associated with the storage location, where the selectable menu changes in response to activation of the selectable menu switch. Again, the Walker et al. patent has nothing to do with a selectable menu or a selectable menu switch. The Walker et al. patent relates only to an automated kitchen apparatus which measures the elapsed time from when food product is cooked, and gives the customer the option at a POS terminal to purchase aged food for a discount. There is no disclosure in the Walker et al. patent of a selectable menu, a selectable menu switch or the selectable menu changing in response to activation of the selectable menu switch. As mentioned previously, the Savage patent also does not disclose any of these features set forth in Claim 64. Accordingly, it is respectfully urged that Claim 64, as amended, patentably distinguishes over the Savage patent and the Walker et al. patent, taken alone or in combination, and is allowable.

Claim 65, as amended, specifically defines the product status system as having a food product pan associated with the storage location and at least one of the food product status switch and the food product status indicator is located in proximity to the food product pan. Again, this is clearly shown in Figure 2 of the drawings of the subject application. No pan, or food product status indicator, or food product status switch is disclosed in the Walker et al. patent, nor is a food product status switch and/or a food product status indicator situated in proximity to a food product pan, as specifically defined by amended Claim 65. The Walker et al. patent merely discloses an automated kitchen apparatus and method which discounts aged food product based on the elapsed time which is measured from cooking the product. As mentioned previously, the Savage patent also does not disclose a food product status

switch, a food product status indicator, or a food product pan associated with a storage location, and locating the food product status switch and/or the food product status indicator in proximity to a food product pan. As such, it is respectfully urged that Claim 65, as amended, patentably distinguishes over the Savage patent and the Walker et al. patent, taken alone or in combination, and is allowable.

Claims 54 and 55 have been rejected under 35 U.S.C. 103(a) as being unpatentable in view of the combination of the Savage patent, the Walker et al. patent and the Koether patent. The Koether patent has been carefully reviewed, and it does not supplement the inadequacies of the Savage patent and the Walker et al. patent.

The Koether patent relates to a bi-directional communication network which provides real-time, computer-aided diagnostics, asset history, accounting records, maintenance records and energy management for a plurality of appliances. As is disclosed in the Koether patent, a preferably wireless communication system is set up so that customer information contained in a database at a control center, having accounting history, appliance data and previous repairs and faults, may be accessed by service personnel to minimize the amount of work performed by service personnel for repairs and other administrative tasks. The system also allows a kitchen or a restaurant to effect a change in a recipe for a particular food product which may be communicated from the control center.

Claim 54 specifically defines the product status system as further comprising an active switch associated with the storage location, specifically defines the food product status indicator as having a seventh state which indicates that the storage location is not being used, and specifically defines the state of the food product status indicator as changing to the seventh state in response to activation of the active switch. Figure 7a of the Koether patent discloses a flow chart which allows for an appliance to be disabled, at Block 740, but does not disclose an active switch which is associated with a "storage" location, nor does it disclose a food product status indicator which has a seventh state which indicates that the storage location is not being used. The Koether patent also does not disclose that the state of the food product status indicator changes to the seventh state in response to activation of the active switch. The Walker et al. patent also does not disclose the particular features set forth in Claim 54, and for that matter, Claim 55. The Walker et al. patent does not disclose the

Applicants: Mark Salerno

Serial No: 09/692,578

Filed: October 19, 2000

Our Docket: 948-5

Page 25

feature of making a storage or holding location inactive, as defined by Claims 54 and 55 (“wherein the food product status indicator has at least a seventh state which indicates that the storage location is not being used”). Since the Walker et al. patent does not disclose controlling the quantity of food that is being held, it does not make a holding or storage location inactive as defined by Claims 54 and 55. It has already been discussed previously that the Savage patent and the Walker et al. patent does not disclose these features.

Accordingly, it is respectfully urged that Claim 54 patentably distinguishes over the Savage patent, the Walker et al. patent and the Koether patent, taken alone or in combination, and is allowable.

Furthermore, Claim 54 depends from Claim 51 and patentably distinguishes over the Koether patent, the Savage patent and the Walker et al. patent for the same reasons submitted with respect to Claim 51. The Koether patent does not disclose the features of Claim 51, that is, a food product status switch associated with a storage location, a food product status indicator associated with the storage location, and a storage timer associated with the storage location. The Koether patent also does not disclose the food product status indicator having at least a first state which indicates that the prepared food product is stored at the associated storage location and at least a second state which indicates that the prepared food product is not stored at the associated storage location, nor does the Koether patent disclose the state of the food product status indicator associated with the storage location changing from the second state to the first state in response to the prepared food product being supplied to the storage location and the food product status switch being selectively operated by a user, and the state of the food product status indicator associated with the storage location changing from the first state to the second state in response to the storage location no longer containing prepared food product and the food product status switch being selectively operated by the user.

The Koether patent also does not disclose a storage timer which is initiated in response to the food product status indicator changing from the second state to the first state, and that a food storage timer counts a storage time, the storage time being representative of the duration of time that the prepared food product has been stored at the storage location. The Koether patent also does not disclose a food product status indicator having at least a

third state which indicates that the storage time exceeds an acceptable food product hold time. Accordingly, it is respectfully urged that Claim 54 patentably distinguishes over the Koether patent, alone or in combination with the Savage patent and the Walker et al. patent, for the same reasons submitted with respect to Claim 51 stated previously.

Claim 55 also depends from Claim 51 and is respectfully urged to patentably distinguish over the Koether patent, alone or in combination with the Savage patent and the Walker et al. patent, for the same reasons mentioned above with respect to Claim 51. Also, Claim 55 defines the food product status indicator as having at least a seventh state which indicates that the storage location is not being used, and that the state of the food product status indicator changes to the seventh state in response to at least one of a time, a day and an event. The Koether patent merely discloses the disabling of an appliance (Block 740 in Figure 7a), but does not disclose a food product status indicator or changing the food product status indicator, the food product status indicator having a seventh state, or changing the state of the food product status indicator to the seventh state in response to at least one of a time, a day and an event. As mentioned previously, the Savage patent and the Walker et al. patent also do not disclose the particular features set forth in Claim 55. Accordingly, it is respectfully urged that Claim 55 patentably distinguishes over the Savage patent, the Walker et al. patent and the Koether patent, taken alone or in combination, and is allowable.

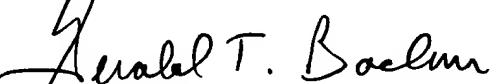
Claim 65 has also been rejected under 35 U.S.C. 103(a) as being unpatentable over the Savage patent. Claim 65 depends from Claim 51 and, as such, it is respectfully urged that Claim 65 patentably distinguishes over the Savage patent for the same reasons submitted with respect to Claim 51 mentioned previously. Also, Claim 65 includes the limitations not found in the Savage patent. Claim 65, as amended, defines the storage location of the product status system of the present invention as having a food product pan associated therewith, and at least one of the food product status switch and the food product status indicator is located in proximity to the food product pan. No food product pan is disclosed in the Savage patent. Furthermore, no food product status switch or food product status indicator, which indicates whether food product is stored at the storage location, is taught or suggested by the Savage patent. Additionally, the Savage patent does not disclose a food product status switch and/or a food product status indicator being located in proximity to a food product pan. The Savage

Applicants: Mark Salerno  
Serial No: 09/692,578  
Filed: October 19, 2000  
Our Docket: 948-5  
Page 27

patent only discloses a computer system which monitors signals from the cash register and alerts the cook when to begin cooking more food product. Accordingly, it is respectfully urged that Claim 65, as amended, patentably distinguishes over the Savage patent and is allowable.

In view of the foregoing amendments and remarks, entry and favorable consideration of the amendments to Claims 51, 56-58, 60 and 62-65, reconsideration of unamended Claims 52-55, 59 and 61 and allowance of the application with Claims 51-65 are respectfully solicited.

Respectfully submitted,



Gerald T. Bodner  
Attorney for Applicant  
Registration No. 30,449

BODNER & O'ROURKE, LLP  
425 Broadhollow Road, Suite 108  
Melville, New York 11747  
Telephone: (631) 249-7500  
Facsimile: (631) 249-4508